

## Department of State

## § 72.1

shall suspend provision of the dietary supplements and report the incident in full to the Department.

### PART 72—DEATHS AND ESTATES

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#### REPORTING DEATHS OF UNITED STATES CITIZENS

##### § 72.1 Consular responsibility.

(a) A consular officer (or in his absence a diplomatic officer) is responsible for reporting to the Department, to the legal representative, and to the closest known relative the deaths of all United States citizens occurring in his consular district except as otherwise provided in § 72.2. In order that he may be informed of such deaths, the consular officer should enlist the cooperation and assistance of the local authorities and the members of the American community.

(b) A consular agent is not authorized to report the deaths of United States citizens to the Department, to the legal representative and to the closest known relative. The consular agent should, however, immediately report the circumstances of the death to

his principal consular officer, who then has the responsibility for reporting in the manner prescribed in this section through § 72.8.

**§ 72.2 Exceptions to consular responsibility.**

(a) *Department of Defense personnel.* The Department of Defense is required to report officially the deaths of its military and civilian personnel. However, if no representative of the Department of Defense is present in the consular district where the death occurs, the consular officer should inform the Mission in the country to which he is assigned regarding the circumstances, for action by the appropriate attaché. In colonial or trustee areas, or in countries in which no Defense Department attaches are assigned, the consular officer should telegraph the particulars of the death to the Department of State, indicating the maximum length of time before local burial is mandatory, for action by the Department of Defense. All inquiries concerning the death of any person falling within this category should be referred to the Department of Defense, Washington, DC 20301. Instructions in this paragraph do not apply to reporting the deaths of dependents of Department of Defense personnel or to reporting the deaths of contractor personnel, i.e., United States civilians employed in foreign countries by commercial concerns operating under contract with the Department of Defense, or their dependents. The deaths of such persons should be reported in the manner prescribed in § 72.4.

(b) *Coast Guard personnel.* The United States Coast Guard is required to report officially the deaths of its military and civilian personnel. If death occurs in any country in Europe or the British Isles in which a Coast Guard detail is not assigned, the consular officer should inform the Senior Coast Guard Merchant Marine Detail Officer (Europe), London, England, by telegraph. If the death occurs outside Europe or the British Isles, the consular officer should telegraph the particulars of the death to the Department of State, indicating the maximum length of time before local burial is mandatory, for action by the Coast Guard. All

inquiries concerning the death of Coast Guard personnel should be referred to the Commandant, United States Coast Guard, Washington, DC 20226. The instructions in this section do not apply to reporting the deaths of dependents of Coast Guard personnel. The deaths of such persons should be reported in the manner prescribed in § 72.4.

**§ 72.3 Telegraphic notifications of death.**

(a) *Use of telegraph.* When instructions must be obtained from the next of kin or other interested person in the United States as to disposition of the remains, notification of death should be sent by telegraph to the Department for forwarding. If available to the consular officer, the name and address of the next of kin or legal representative (§ 72.18) should be included in the message. Consular officers at posts in Canada and Mexico whose consular districts are contiguous to the United States may, in their discretion, communicate directly by telegraph with next of kin or legal representative, requesting instructions for disposition of the remains.

(b) *Content of notification.* All such notifications should state the minimum cost of

- (1) Local burial;
- (2) Cremation (if applicable);
- (3) Embalming, preparing and shipping the remains; and
- (4) The maximum period of time before local burial is mandatory.

(c) *Payment of charges.* The cost of these initial notifications of death by telegraph is a proper charge against official funds. Subsequent telegrams relating to matters for personal decision are normally at the expense of interested parties.

[22 FR 10841, Dec. 27, 1957, as amended at 30 FR 4412, Apr. 6, 1965]

**§ 72.4 Normal reporting procedure.**

(a) *Purpose and use of Form FS-192.* Form FS-192, "Report of the Death of an American Citizen", is an administrative report established for the purpose of providing essential facts concerning the death of a United States citizen, and should be used to report the death officially to the Department, to the legal representative, and to the

closest known relative of the deceased. Notification of death by telegraph does not eliminate the necessity for reporting the death on Form FS-192.

(b) *Information required on Form FS-192.* All information called for under the various headings of Form FS-192 should be supplied in as much detail as possible. When prolonged delay is experienced in procuring full data, the consular officer should prepare and distribute a preliminary report of death on Form FS-192, marking the report "Preliminary." This should be followed by a final and complete report as soon as full data are available. Expanded comments necessary to cover special circumstances concerning the death, should appear under the heading "Remarks." When applicable, statements concerning the following subjects should also appear under the heading "Remarks":

(1) Disposition made of the passport and certificate of naturalization (see § 72.8);

(2) If the deceased is known to have been the recipient of continuing payments other than salary from the Federal Government (e.g., retirement, social security, disability compensation, or veterans insurance or benefits), indication of the nature of the Payments received;

(3) If the deceased is a Selective Service registrant of inductible age, his Selective Service registration number and the number and address of his Local Board, when known.

(c) *Signing and sealing of Form FS-192.* All copies of the Form FS-192 should be signed by the consular officer with his name and official title typed below, and the consular impression seal should be impressed on each copy.

(d) *Transmission of Form FS-192 to the Department.* The original of Form FS-192 shall be sent to the Department, plus one additional copy for each agency concerned, if the deceased was:

(1) A recipient of continuing payments other than salary from the Federal Government; or

(2) An officer or employee of the Federal Government (other than Department of Defense or Coast Guard); or

(3) A Selective Service registrant of inductible age.

(e) *Transmission of form to legal representative and next of kin.* A copy of Form FS-192 should be sent to the legal representative. A copy should also be sent to the closest known relative of the deceased (or relatives, if there are two or more persons having equal interests). No fee is prescribed for sending one copy each of completed Form FS-192 to the legal representative and to the closest known relative or relatives.

(f) *Transmission of form to other consular districts.* In the event that a part of the personal estate of the decedent is known to be in a consular district other than that in which the death occurs (see § 72.32), a copy of Form FS-192 should be sent to the consular officer in the other district.

(g) *Supplying copies of form.* Copies of Form FS-192 shall be supplied by the Department of State or by the Foreign Service post upon request to any person having valid need therefor. Charges are as prescribed in the Schedule of Fees (§ 21.1 of this chapter) or in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

#### § 72.5 Reports of presumptive deaths.

(a) *Provisional report.* Upon the receipt of evidence that a United States citizen is missing and is presumed to be dead, a report should be submitted to the Department on Form FS-192, with the title amended to read "Report of the Presumptive Death of an American Citizen." A statement should be inserted in the form under the heading "Cause of Death" such as the following: "Reported missing, believed to be dead", giving the source of the information upon which the presumption is based. A statement should also be included under the heading "Remarks" showing the requirements of local law for the establishment of legal presumption of the death of missing persons; i.e., whether under local law the legal presumption of death automatically arises at the expiration of a stipulated lapse of time, or whether formal action is necessary to obtain legal confirmation of the death of missing persons.

(b) *Final report.* In the event that the fact of death is established, a final complete report shall be submitted to

the Department on Form FS-192 marked "Final Report," in which reference shall be made, under the heading "Remarks", to the provisional report. If feasible, a "Final Report" should be submitted at such time as legal presumption of death arises in accordance with local law.

**§ 72.6 Reports of deaths on the high seas.**

(a) *On vessels of United States registry.* When a United States citizen (not a seaman) dies on board a vessel of the United States making a voyage from a port in the United States to any foreign port, the master of the vessel is required to enter the circumstances of the death in the official log book (46 U.S.C. 201). Customarily, these circumstances are reported to the consular officer at the first port of call. On the basis of the log entry, the consular officer should report the death on Form FS-192 in the manner prescribed for other United States citizens (see § 72.4). A copy of the text of the log entry, certified by the master, should be retained with the office copy of Form FS-192.

(b) *On vessels of foreign registry.* When a United States citizen dies on a vessel of foreign registry, all information obtained from the master of the vessel for purposes of reporting the death on Form FS-192, should be supported by a certified copy of the text of the log entry, if obtainable.

**§ 72.7 Reports on deceased persons believed to be United States citizens.**

(a) *Verification of citizenship.* As Form FS-192 may be accepted in courts of law, or considered elsewhere, as evidence of United States citizenship at the time of death, the consular officer should consult the regulations describing the evidence of citizenship which is acceptable for passport and registration purposes and should exercise due care in determining the citizenship status of the deceased. In doubtful cases he should transmit the Form FS-192 to the Department under cover of a despatch stating that the citizenship of the deceased has not been verified. The Department will then determine whether Form FS-192 may be released to the legal representative, next of kin,

or other interested person, and will inform the consular officer of whatever action is taken.

(b) *Presumptions as to citizenship status.* When the deceased was not currently documented at a Foreign Service office as a United States citizen, it must be assumed that, if the deceased was—

(1) A native citizen, he had retained United States citizenship at the time of death, in the absence of evidence of an affirmative act of expatriation under paragraph 1, section 2 of the act of March 2, 1907, section 401 of the Nationality Act of 1940, or section 340 or 350 of the Immigration and Nationality Act;

(2) A naturalized citizen, he had retained United States citizenship at the time of death, in the absence of evidence that he had lost nationality of the United States by having a continuous residence for three years in the territory of a foreign state as provided in section 352(a)(1) of the Immigration and Nationality Act, or by having a continuous residence for five years in any other foreign state or states as provided in section 352(a)(2) of the same act, unless there is evidence that his case comes within one of the exceptions established under section 353 or 354 of the act. Nationality may also have been lost under similar provisions contained in section 404 of the Nationality Act of 1940. The term residence as used herein means the place of general abode, and residence shall be considered continuous for the purpose of sections 350 and 352(a) (1) and (2) of the act where there is a continuity of stay but not necessarily an uninterrupted physical presence in a foreign state or states or outside the United States.

**§ 72.8 Disposition of nationality documents.**

(a) *Passport.* The passport of a deceased United States citizen should be canceled by the consular officer and either returned to the Department or delivered to the person having a legitimate interest therein. Only a person who is included in the passport may be considered to have a legitimate interest in it. The date and place of death should be noted on the passport, and an

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appropriate notation made on Form FS-192 (see § 72.4(b)(1)).

(b) *Certificate of naturalization.* The certificate of naturalization of a deceased United States citizen should be taken up by the consular officer and forwarded to the Department for transmission to the Department of Justice; or, if the certificate is claimed by any person who may have a legitimate interest therein, it should be endorsed by the consular officer to show the date and place of death of the person to whom it was originally issued, and should then be delivered to the person entitled thereto, with appropriate notation made on Form FS-192 (see § 72.4(b)(1)).

### DISPOSITION OF REMAINS

#### § 72.9 Consular responsibility.

(a) In the absence of relatives or other interested persons, the consular officer should exert all reasonable effort to carry out the expressed wishes of the deceased or next of kin as to local burial, cremation, or shipment of the remains, taking care that the legal requirements of the country are met. However, the consular officer is neither authorized nor expected to assume any financial responsibility for, or to incur any expense in connection with, the disposition of the remains of deceased persons unless specifically instructed to do so by the Department. When the next of kin or other interested person cannot be reached within the period provided by local law for the interment or preservation of dead bodies and sufficient funds can be realized from the personal estate of the deceased in the consular officer's possession, he should arrange for disposal of the remains locally and draw funds from the estate to cover the costs (see § 72.39; also § 72.20 as regards withdrawals from bank accounts). If there are not sufficient funds in the estate to cover the costs, and funds are unobtainable from relatives or other interested persons, there may be no alternative but to accept disposal of the remains by the local authorities in accordance with local law or regulations. (See also § 72.13 for remains requiring special handling.)

(b) A consular agent may, upon instructions from his principal consular officer, arrange for the disposition of remains of deceased United States citizens. His principal consular officer has, in accordance with this section to § 72.14, the responsibility for reporting to relatives and for complying with the laws of the country in which the death occurred as well as the requirements of the United States.

#### § 72.10 Local burial.

(a) *Arrangements for funerals.* When the responsibility for local burial falls on the consular officer (see § 72.9), he should endeavor to carry out the expressed instructions of the deceased or, in the absence of such instructions, the wishes of the next of kin. Funeral services should be conducted in accordance with the rites of the religious faith of the deceased, if known. In each instance the consular officer should notify known friends of the deceased and other interested persons in the consular district (such as any American community organizations) of the date and place of the funeral. When practicable, the services should be attended by a member of the consular staff.

(b) *Report to relatives.* The next of kin, or other person whose wishes have been considered in making the arrangements for local burial, should be informed by letter of any funeral service that is held.

(c) *Erection of markers.* If the consular officer is requested to make arrangements for the erection of markers on graves, he may assist to the extent of ascertaining any feasible procedure for making local arrangements and effecting direct remittance for this purpose, and informing the interested party accordingly.

(d) *Upkeep of graves.* The maintenance and repair of graves of persons whose remains are interred abroad, including officers and employees of the Foreign Service, is not a proper charge against official funds unless specifically authorized. If the consular officer is requested to make arrangements for the upkeep of graves, he may assist to the extent indicated in paragraph (c) of this section with respect to the erection of markers.

**§ 72.11 Cremation.**

(a) *Arrangements.* When cremation is desired, and the facilities are available, the consular officer should see that all necessary arrangements are made if compatible with the requirements of the country in which the death occurred, having in mind particularly such local laws as may prohibit cremation unless specific request for such disposition was made in writing by the individual prior to death.

(b) *Disposition of ashes.* Disposition of the ashes should be made in accordance with the expressed wishes of the deceased or the next of kin, or other interested person. If shipment to the United States is desired, only local health requirements must be met, as there are no sanitary requirements for entry of ashes into the United States. A marking should be made on, or a marker firmly affixed to, the container in which the ashes are shipped. The latter should be accompanied by—

- (1) An official death certificate;
- (2) Cremation certificate;
- (3) Certificate from the crematorium stating that the container holds only the cremated remains of the deceased; and
- (4) A permit to export (if required locally).

**§ 72.12 Shipment of remains to the United States.**

(a) *Arrangements.* Whenever the remains of persons who have died abroad, regardless of the nationality of the deceased, are to be shipped to the United States, the consular officer should assure himself that they are properly encased and accompanied by all necessary papers pertaining to the death, exhumation (if applicable) and preparation for shipment. The requirements of the country where the death occurred must be met at all times.

(b) *Local documents accompanying remains.* The following documents should accompany the remains for shipment, attached to the consular mortuary certificate (see paragraph (d) of this section):

- (1) A certificate of death issued by the local registrar of deaths, or similar authority, identifying the remains, showing the place, date and cause of death as certified by the attending

physician, with a listing of the cause of death conforming as far as practicable with the terminology of the International List of Causes of Death (needed to comply with United States Quarantine and interstate requirements);

(2) The affidavit described in paragraph (c) of this section (for United States Customs), which also would generally include evidence of embalming, when applicable (needed to comply with the requirements for interstate shipment);

(3) A “transit permit” authorizing export of the body out of the country, issued by the health authority at the port of embarkation, stating the date of its issuance, name of deceased, sex, race, age, cause and date of death (needed to comply with New York health requirements).

(c) *Packing and labeling of casket.* In order to facilitate clearance through United States Customs at the port of entry, the undertaker, or whatever person is responsible for packing the body for shipment, should be required to make a sworn declaration—to be attached to the consular mortuary certificate (see paragraph (d) of this section)—that the casket or box contains only the body of the deceased and the necessary clothing and packing. The sworn declaration should be made, if practicable, before the consular officer; if not, it should be made before a qualified local official, whose signature and seal can be authenticated by the consular officer. The outer box should be labeled in conformity with port of entry health requirements.

(d) *Consular mortuary certificate.* A consular mortuary certificate should be prepared indicating how the case is marked and addressed, means of transportation to the United States, name of carrier, date and place of shipment, port of entry and scheduled time of arrival. The documents listed in paragraph (b) of this section should be ribboned to the consular mortuary certificate, which should be signed by the consular officer and sealed with the consular press seal.

**§ 72.13 Remains requiring special handling.**

(a) *Foreign Service personnel.* In the absence of relatives or other interested

persons, the consular officer should make all necessary arrangements for the disposition of the remains of deceased officers and employees of the Foreign Service according to specific instructions from the Department.

(b) *Personnel of other Government agencies.* The consular officer should extend to other departments or agencies of the United States Government all appropriate aid, in accordance with specific instructions received through the Department of State for the disposition of the remains of an employee who has died while serving in a foreign country.

#### **§ 72.14 Fees for disposing remains.**

No fees are prescribed for services in connection with the disposition of remains of United States citizens or nationals. Fees for such services with respect to the remains of foreign nationals are as prescribed in the Schedule of Fees, 22 CFR 22.1.

[63 FR 6480, Feb. 9, 1998]

#### PERSONAL ESTATES OF DECEASED CITIZENS

#### **§ 72.15 Statutory responsibility of consular officer.**

Sections 1175–1179 of title 22 of the United States Code prescribe the statutory responsibility of officers of the United States Foreign Service for the personal estates of deceased United States citizens dying outside the United States.

#### **§ 72.16 Regulatory responsibility of consular officer.**

Except as otherwise provided in §§ 72.18 through 72.26, the consular officer (or in his absence a diplomatic officer) should take possession and dispose of the personal estates (other than the articles described in §§ 72.29 and 72.30) of all United States citizens who die within his jurisdiction or were residing therein at the time of death. This responsibility should be discharged in accordance with the procedure prescribed herein so far as that procedure is authorized by:

- (a) Treaty provisions; or
- (b) The laws or authorities of the country wherein the estate is located; or

- (c) Established usage.

#### **§ 72.17 Responsibility of consular agents.**

A consular agent has no statutory authority to take possession and dispose of the personal estate of a deceased citizen of the United States, except under the immediate supervision and as the agent of his principal consular officer. The consular agent, therefore, should immediately report the circumstances to, and request instructions from, his principal consular officer, who should assume the responsibility for taking possession and disposing of the personal estate in accordance with the regulations in this part.

#### **§ 72.18 Responsibility if legal representative is present.**

According to law (22 U.S.C. 1175), the consular officer should not take possession or dispose of the personal estate of a deceased citizen who has left a legal representative in the country where the death occurred or in the country where he was residing at the time of death. As used here, the term “legal representative” means—

- (a) An executor designated by will or testament;
- (b) An administrator appointed in interstate proceedings;
- (c) An agent of executor or administrator qualifying by power of attorney;
- (d) A child of legal age;
- (e) A parent;
- (f) The next of kind (nearest blood relative);
- (g) The surviving spouse.

#### **§ 72.19 Responsibility if trustee for personal estate is present.**

Likewise, the law (22 U.S.C. 1175) stipulates that the consular officer should not take possession or dispose of the personal estate of a deceased citizen who has left in the country where the death occurred, or in which he was residing at the time of death, a “trustee by him appointed.” The language of the statute includes any person, natural or juristic, appointed by the decedent in a will, or appointed by a deed to hold legal title to the personal property for the benefit of a named beneficiary.

**§ 72.20 Responsibility if “partner in trade” is present.**

Although the law (22 U.S.C. 1175) also relieves the consular officer of responsibility if a “partner in trade” is present, the death of one member of a partnership automatically dissolves this relationship. Consequently, the surviving partner or partners have no beneficial interest as “partners in trade” in the personal estate of the deceased. The duties and responsibilities of provisional conservator of the personal estate of the deceased cannot therefore be assumed by a surviving partner, unless he is duly authorized to act as a legal representative of the deceased. Accordingly, the presence of a former “partner in trade” will not necessarily relieve the consular officer of his responsibility.

**§ 72.21 Responsibility if will intended to operate locally exists.**

If a will is discovered which is intended to operate locally, and a local or domiciliary representative named by the decedent qualifies promptly and takes charge of the personal estate, the consular officer should assume no responsibility for the estate (§§ 72.18 and 72.19), and should not take possession, inventory and dispose of the personal property and effects or in any way serve as agent for the local or domiciliary representative. However, if the laws of the country permit and if the local or domiciliary representative does not qualify promptly, the consular officer may have take protective action in the interest of the estate to the extent of placing his seal on the personal property and effects of the decedent, such seal to be broken or removed only at the request of the local or domiciliary representative. Furthermore, he should see that the foreign authorities accord due recognition to the American interests involved and provide proper protection for the property under local procedures. If prolonged delays are encountered by the local or domiciliary representative in making arrangements to take charge of the personal estate, the consular officer may request that the will be offered for probate, if in his judgement such action is advisable in the interest of the estate.

**§ 72.22 Responsibility if will intended to operate in the United States exists.**

If a will that is intended to operate in the United States is found among the effects taken into possession by the consular officer, it should be forwarded immediately to the person or persons designated, in the event that their whereabouts are known. When this is impossible, the will should be sent to the appropriate court in the State of the decedent’s domicile. Special directions contained in the will for the conservation by the consular officer of the personal estate should be observed by him so far as the laws of the foreign country and these regulations permit him to act.

**§ 72.23 Responsibility in case of Department of Defense personnel.**

The Department of Defense is required, in the absence of a legal representative or other authorized person (see §§ 72.18 and 72.19), to assume responsibility for the disposition of the personal estates of its military and civilian personnel who have died abroad. However, when no representative of the Department of Defense, or other authorized person, is present at the time of death, the consular officer should take possession of the personal estate and hold it for disposition in accordance with instructions from the Department of Defense. No fee should be charged for services so rendered (§ 72.54). Instructions in this section do not apply to the personal estates of dependents of Department of Defense personnel; nor to contractor personnel, i.e., United States civilians employed in foreign countries by commercial concerns operating under contract with the Department of Defense, and their dependents. The estates of such persons should be disposed of in the manner prescribed by §§ 72.28 to 72.51, if no legal representative is present.

**§ 72.24 Responsibility in case of Coast Guard personnel.**

The United States Coast Guard is required, in the absence of a legal representative or other authorized person (see §§ 72.18 and 72.19), to assume responsibility for the disposition of the

personal estates of its military and civilian personnel who have died abroad. However, when no representative of the Coast Guard, or other authorized person is present at the time of death, the consular officer should take possession of the personal estate and hold it for disposition in accordance with instructions from the Commandant, United States Coast Guard. No fees should be charged for services so rendered (§ 72.54). Instructions in this section do not apply to the personal estates of dependents of Coast Guard personnel. The estates of such persons should be disposed of in the manner prescribed by §§ 72.28 to 72.51, if no legal representative is present.

**§ 72.25 Responsibility in case of citizens dying on the high seas.**

(a) *Consular responsibility not provided by statute.* There is no express provision of law authorizing the consular officer to take possession and dispose of the personal estate of a citizen of the United States (not a seaman) who has died on the high seas.

(b) *When death occurs on board vessel of United States registry.* If the death occurred on board a vessel of the United States, the master of the vessel, in the absence of a legal representative or other authorized person (see §§ 72.18 and 72.19), should be requested to take custody and return the personal estate to the shipping company in the United States for forwarding to the legal representative or other authorized person.

(c) *When death occurs on board vessel of foreign registry.* Death on board a vessel of foreign registry is considered to have occurred in the territory of the country of the ship's registry, and the estate laws of that country are applicable in such cases. In the absence of a legal representative or other authorized person (see §§ 72.18 and 72.19), the consular officer should take possession and dispose of the personal estate, provided that the laws of the country of assignment as well as the laws of the country of the ship's registry permit. The procedure in such cases is identical with that followed in the disposition of the estate of any United States citizen who may have died within the consular district, except that no fees should be charged for services rendered (§ 72.55).

**§ 72.26 Responsibility in case of seamen.**

See §§ 85.4 to 85.9 of this chapter for regulations regarding the disposition of the personal estates of seamen who have died while serving as members of the crew of a vessel of the United States. The consular officer should take possession and dispose of the personal estates of United States citizens who have died while serving as seamen on board foreign vessels, in the manner prescribed by § 72.25(c).

**§ 72.27 Responsibility in case of Foreign Service personnel.**

In the absence of a legal representative or other authorized person, the consular officer should take possession and dispose of the personal estates of deceased Foreign Service personnel in the manner prescribed by these regulations for other deceased citizens of the United States, except that no fee should be charged (§ 72.54). Travel orders issued by the Department for shipment of the personal effects of deceased officers and employees of the Foreign Service constitute only administrative authorization to transport the effects to a given destination, and in no way relieve the consular officer of the responsibility for satisfying himself of a claimant's right to the personal estate prior to shipment (§ 72.43).

**§ 72.28 Effects to be taken into possession.**

Although no limitations are placed by law (22 U.S.C. 1175) on the nature and extent of the personal property that should be taken into possession by the consular officer in the absence of a legal representative, experience has shown that the need exists to delimit by regulation the consular officer's obligations, but not his authority, in this regard. For example, the consular officer would not normally be expected to take physical possession of the articles covered in § 72.29 unless the items are of such nature and quantity as to be readily included with the personal effects of the nature described in this section, or unless such action, when physically possible, is necessary for the preservation or protection of the property. The consular officer does, however, have responsibility for taking

reasonable steps to safeguard the articles of the personal estate which he does not take into possession until disposition can be effected by the legal representative. The personal effects which the consular officer would normally take into possession in any event include the following:

(a) Convertible assets, consisting of currency, redeemable transportation tickets, evidences of debts due and payable in the country of the officer's assignment, and any other instruments negotiable by the consular officer;

(b) Perishable property (including most foodstuffs), having commercial value;

(c) Luggage;

(d) Wearing apparel;

(e) Miscellaneous personal effects;

(f) Jewelry, heirlooms and articles of sentimental value;

(g) Non-negotiable instruments, defined as any document or instrument not saleable or transferrable by the consular officer, but which requires either the signature of the decedent or action by, or endorsement of, his legal representative; and includes transportation tickets not redeemed or redeemable by the consular officer, traveler's checks, promissory notes, evidences of debts not due and payable in the country of the officer's assignment, stocks, bonds or other similar instruments, bank books, books showing deposits in building and loan associations, etc. No fee is charged on non-negotiable instruments taken into possession by the consular officer; see § 72.53.

(h) Personal documents and papers.

**§ 72.29 Nominal possessions; property not normally taken into possession.**

(a) The taking of articles of personal property into nominal possession from local officials or other persons, for the explicit purpose of on-the-spot release to the "legal representative" as defined in § 72.18 against the latter's memorandum receipt discharging the consular officer without further accounting of any responsibility for articles so transferred by him, shall not be construed as the taking of custody by the officer. No fee shall be charged for the consular officer's service in effecting transfer of the articles in the manner described, provided that he is not re-

quired to prepare a consular inventory, appraise the articles, or list the contents of containers, and provided further that the effects are not taken in safekeeping upon official accountability.

(b) The consular officer is not normally expected to take physical possession, as provisional conservator, of livestock or of articles of personal property which may be found in residences and places of storage such as furniture, household effects and furnishings, bulky works of art, etc., unless the items are of such nature and quantity as to be readily included with the personal effects (§ 72.28), or unless such action, when physically possible, is necessary for the preservation or protection of the property, especially where the articles are of considerable intrinsic value; nor is the consular officer normally expected to take into physical possession motor vehicles, airplanes, or powered watercraft. Personal property not taken into possession should, however, be safeguarded by affixing the consular seal on the premises or on the property (whichever is appropriate), provided the laws of the country permit; or by taking reasonable steps to ensure that such items are placed in safekeeping (at the expense of the estate) until action can be taken by the legal representative. In order to protect the interests of the estate, the consular officer should prepare a list, in quintuplicate, of the articles not taken into physical custody, with indication of safeguarding measures taken, for submission with the inventory of effects which must be prepared for all items in his possession (see § 72.53). If the property which normally would be sealed by the consular officer is not immediately accessible, he should consider requesting the local authorities to seal the premises, or the property, or otherwise ensure that the property remains intact until consular seals can be placed thereon or the property placed in safe storage, or until the legal representative assumes responsibility therefor.

**§ 72.30 Bank deposits in foreign countries.**

The existence of bank deposits when known should be reported to the legal

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representative, or other authorized person, who should be informed of the general procedure required by local law to withdraw such deposits and whether legal counsel is advisable for that purpose. There is no express provision of law authorizing the consular officer to withdraw or otherwise dispose of bank deposits in foreign countries left by deceased United States citizens. Such deposits, therefore, are considered for the purpose of the regulations in this part as forming no part of the personal estate of a decedent, and no Foreign Service fees are chargeable thereon (§72.53(c)). In the event that the consular officer is requested by the legal representative of the estate to withdraw bank balances on his behalf in order to defray local expenses in connection with the death and the settlement of the personal estate of the decedent, he may comply with such request if facilities are provided by the depository for this purpose. Funds withdrawn should be limited to the amount necessary to defray the expenses prescribed herein, and fees should be collected on the amount withdrawn, in accordance with §72.52.

### **§72.31 Action when immediate possession is impracticable.**

The law imposes no affirmative obligation upon the consular officer to travel long distances for the purpose of taking on-the-spot possession of a personal estate. If occasion to visit the locality where the death occurred coincides with the need to take action, the consular officer should avail himself of the occasion to assume custody of the effects. Normally, however, the consular officer's initial responsibility in such cases does not extend beyond reasonable efforts to obtain possession of the estate. He should communicate with the persons, officials, or organizations having custody of the effects, requesting that the effects be delivered to him, at the expense of the estate, for lawful disposition. If the local authorities should decline to surrender possession to the consular officer in a case where he feels that his right to take possession is clear, he may refer the matter to the mission. The consular officer's personal responsibility for any

given item among the personal effects commences only when that item reaches his hand.

### **§72.32 Action when property is in other consular districts.**

If any portion of the personal estate is known to be in another consular district, mention of this should be made under "Remarks" in the Form FS-192; and a copy of this form should be sent to the consular officer concerned (see §72.4(f)) who should assume responsibility independently for taking possession and disposing of these effects in the manner prescribed herein. If the cash resources of the personal estate found in one consular district are insufficient to pay the decedent's debts in that district or in the country of the consular officer's assignment (see §72.39), the funds found among the personal effects in the other consular district may be utilized to pay the decedent's debts in both districts or countries. In such cases, the consular officer who effects the transfer of the funds should enter the disbursement in his final statement of account (see §72.51), including the funds transferred in the gross amount of the estate in his possession, for the assessment of fees as indicated in §§72.52 to 72.55. The funds transferred should also appear in the final statement of account of the consular officer receiving them as "receipts" and "disbursements", stating the source. However, no fee should be charged on the amount involved (see §72.53(b)).

### **§72.33 Official notification to legal representative.**

The preparation and forwarding of Form FS-192 complies with the law (22 U.S.C. 1176) as regards notification of death to the legal representative as well as to the Secretary of State. Failing by direct means to locate a legal representative, the consular officer may, if required in connection with the settlement of the estate, have recourse to giving public notice of the death in "one of the gazettes" (i.e. any suitable periodical) in the consular district.

**§ 72.34 [Reserved]****§ 72.35 Procedure for inventorying and appraising effects.**

After taking possession of the personal estate of a deceased citizen, the consular officer should immediately inventory and appraise the personal effects on the basis of the local market value, article by article, with the assistance of two other persons who should join him in signing the inventory and in certifying to the accuracy of the appraised value of each article inventoried. The inventory should include only that part of the personal estate actually taken into possession by the consular officer, regardless of value and the fact that the death may have occurred in one consular district and a portion of the personal effects may be found in another consular jurisdiction. Care should be exercised not to overestimate the value of the personal effects, which is the basis on which Foreign Service fees will be charged (§ 72.52). The consular officer may, in his discretion, call upon professional appraisers at the expense of the estate when warranted by the nature of the personal effects, i.e., expensive jewelry, furs, etc.

**§ 72.36 Preparation and disposition of inventory.**

The inventory of effects should be prepared in quintuplicate. All copies should be signed by the consular officer and the two persons who assisted in its preparation, and they should be disposed of in the following manner:

- (a) The original retained in the office files;
- (b) Two copies, under cover of a despatch, sent to the Department (one copy for transmission to the General Accounting Office);
- (c) One copy to the legal representative (two copies if the next of kin is the legal representative); and
- (d) One copy to the next of kin.

**§ 72.37 Disposal of perishable property.**

As soon as practicable after the consular officer takes possession, the perishable portion of the personal estate having commercial value (including most foodstuffs) should be sold at auc-

tion, i.e., to the most favorable bidder, unless the amount involved does not justify such expenditure. A newspaper advertisement, written or oral requests for bids from any interested party, or the services of a professional auctioneer, may all serve the purpose of insuring an impartial sale. When the value of the goods or circumstances do not justify such action, the consular officer may proceed directly with the sale of the goods.

**§ 72.38 Collection of debts due deceased.**

The consular officer should endeavor to collect only those debts due the decedent from persons or concerns in the country in which the death occurred or in the country in which the decedent was residing at the time of death. Debts so collected are regarded as part of the decedent's personal estate, and should be included in the gross amount thereof for the assessment of fees (§ 72.52).

**§ 72.39 Payment of debts owed by deceased.**

(a) *When cash resources suffice.* The decedent's debts which the consular officer is reasonably certain are legitimately owed in the country in which the death occurred, or in the country in which he was residing at the time of death, including expenses incident to the disposition of the remains and the personal effects, should be paid out of the cash resources of the personal estate taken into possession by the consular officer; namely, money found among the personal effects, proceeds of the sale of the perishable property, or funds received through the collection of debts owed the decedent. See § 72.32 in regard to the personal estate in another consular district. Any doubtful claim against the estate should be referred to the legal representative or other authorized person for consideration; a claim for damages for a negligent or wrongful act of the decedent is not a debt to be paid by the consular officer unless it has been reduced to judgment.

(b) *When cash resources are insufficient.* In the event that the cash resources of the personal estate are not sufficient to pay the debts owing in the

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country in which the death occurred, or in the country in which the decedent was residing at the time of death, the consular officer should endeavor to obtain sufficient funds from the legal representative, next of kin or other interested person. See § 72.32 concerning funds found in another consular district. Fees are not charged on funds so furnished (§ 72.53). If sufficient funds cannot be assembled from the foregoing sources, the consular officer should sell at auction (see § 72.37), such portion of the personal estate as may be necessary to pay the debts and expenses. Should occasion arise for sale of motor vehicles, airplanes or powered watercraft, title to which and liens upon which in the United States and almost universally are matters of official record, care should be taken to conform with applicable registration requirements. Articles which are most marketable, and at the same time least likely to be desired by the heirs of the decedent, should be sold first. Jewelry, heirlooms and articles which may have sentimental value to relatives, regardless of intrinsic value, should be sold only in case of necessity, and in the order named. Members of the decedent's family should be notified of the necessity for the sale, if practicable, in order that they may purchase these articles if they desire. Proceeds from the sale are regarded as forming part of the personal estate and should be included in the gross amount thereof for the assessment of Foreign Service fees (see § 72.52).

### **§ 72.40 Consular officer not to act as administrator of estate.**

The consular officer normally should not accept appointment from any foreign state or from a court in the United States to act as administrator, or to assist (except as provisional conservator) in administering the personal estate of a deceased citizen who has died, or was residing at the time of death, within his consular district. Neither should he accept appointment as guardian or in any other fiduciary capacity in the settlement of the estate without:

(a) Having previously obtained the permission of the Secretary of State to accept such appointment; and

(b) Having assured himself that he has authority so to act under treaty provisions, local law or usage.

If authorization is received as to appointment in any of the capacities indicated above, the consular officer will be required to execute bond, with surety to be approved by the Secretary of State (22 U.S.C. 1178, 1179).

### **§ 72.41 Consular officer not to perform legal services or to employ counsel.**

Owing to the legal restriction against engaging in foreign business or professional activity (22 U.S.C. 805), the consular officer shall not act as attorney or agent for the estate. Neither shall he employ counsel at the expense of the United States Government, or the estate, in collecting and disposing of the personal estate of a deceased citizen. If legal assistance is requested of the consular officer, he may furnish the names of several attorneys or inform the inquirer as to sources through which the names of suitable attorneys may be obtained.

### **§ 72.42 Consular officer not to assume financial responsibility.**

The consular officer, as provisional conservator of the personal estate of a deceased citizen, is neither authorized nor expected to assume any financial responsibility, not to incur any expense in behalf of the estate, in excess of funds available for that purpose (see § 72.39(a)).

### **§ 72.43 Conditions under which estate can be released by consular officer.**

The consular officer is responsible to the United States court having probate jurisdiction over the estate and to the parties in interest for the personal estate in his possession. He must be prepared to deliver the estate to, or otherwise dispose of it according to the wishes of, the legal representative of the decedent upon the presentation of satisfactory evidence of the latter's right to receive the estate, and upon the payment of the prescribed Foreign Service fees (§ 72.52). Determination of what constitutes satisfactory evidence of a claimant's right to the personal estate of a deceased citizen is also the responsibility of the consular officer. The

consular officer, therefore, must satisfy himself that the evidence which he accepts is sufficient to relieve him as provisional conservator. Friends, traveling companions, employers, and business associates are not competent to relieve the consular officer of the duties and responsibilities enumerated in the regulations in this part, unless duly authorized as legal representatives of the estate (see § 72.18). Satisfactory evidence of a claimant's right to the personal estate of a decedent may be supplied in the manner indicated in § 72.44.

**§ 72.44 Evidence of claimant's right to estate.**

(a) *Letters testamentary.* A certified copy of the letters testamentary (an instrument issued by a court of law under which a person, named as executor by a will, formally takes charge of the estate and proceeds to carry out the directions in the will) is prima-facie evidence of the executor's right to take possession of the personal estate.

(b) *Letters of administration.* A certified copy of the letters of administration (an instrument issued by a court of law in intestate proceedings appointing an administrator to take charge of the property of a decedent) is prima-facie evidence of the administrator's right to take possession of the personal estate.

(c) *Affidavit of next of kin.* When a decedent dies intestate, and the personal estate consists only of clothing and similar personal effects appraised at little or no commercial value, or in cases where the consular officer is fully satisfied of the legal right of the claimant and the value of the estate does not warrant the expense of probate proceedings, he may be justified in considering as satisfactory evidence an affidavit executed by the decedent's next of kin. The affidavit of the next of kin should be corroborated by the sworn statements of two persons acquainted with the affiant and familiar with the facts of the case. In any event, the consular officer must satisfy himself of the legal right of the claimant or claimants to the decedent's effects before releasing the property that he has in his possession, and he must decide whether

an affidavit is acceptable in lieu of a certified copy of the letters testamentary or the letters of administration.

**§ 72.45 Shipment of personal estate to the United States.**

(a) When the consular officer is requested to ship to the United States the personal estate in his possession, he should deliver it to a forwarding company selected by the legal representative. Clearance by Customs in the United States will be facilitated if the personal estate is accompanied by a consular certificate identifying it and indicating its nature. If the entire shipment is covered by a single bill of lading, a certificate attached to the original bill of lading covering the shipment would be sufficient; otherwise a certificate should accompany each parcel, box or case.

(b) Extra copies of the bill of lading can serve as a receipt from the forwarding company, one copy to be attached to the consular officer's final statement of account (§ 72.50), and one copy to be retained in the office files. If shipment by registered or insured parcel post, or by other safe means covered by receipt, is possible, there is no objection to forwarding the estate in this fashion, and postal or other receipts should be disposed of in the manner described above, with the original attached to the final statement of account. The personal effects of Foreign Service personnel (see § 72.27) and of personnel of other Government agencies (except Department of Defense and Coast Guard personnel) should be consigned to the United States despatch agent at the port of entry, for forwarding to the legal representative.

**§ 72.46 Consular action on disagreements between claimants.**

If rival claimants or administrators (administrators may be appointed in different jurisdictions) demand the personal estate in the consular officer's possession, he should refuse to deliver the estate until an agreement has been reached, or judgment rendered, as to which claimant or administrator should receive it, and the consular officer so informed in writing. If, after one year, agreement has not been reached

between rival claimants, or judgment rendered, the consular officer should notify all parties concerned and sell the entire personal estate at auction in the manner prescribed by § 72.37, with the exception of jewelry, heirlooms, and articles which may have sentimental value to relatives, regardless of intrinsic value. Should any of the personal property not have been taken into physical possession previously (see § 72.29), the consular officer should take possession of such property and, after preparing a supplementary inventory in the manner prescribed in §§ 72.35 and 72.36, include this portion of the estate with that already in his possession. The proceeds of the sale should be converted into United States dollars and after payment of local debts (§ 72.39) and collection of the fee prescribed by § 72.52, should be transmitted, with any unsold portion of the estate in the consular officer's possession, to the Department of State for forwarding to the General Accounting Office for safekeeping and lawful disposition as conservator of the estate (22 U.S.C. 1175).

**§ 72.47 Consular action on unproved claim to estate.**

If the evidence of a claimant's right to receive the estate is not considered sufficient to relieve the consular officer of his responsibility as provisional conservator, he may elect a period of time, not less than one year from the date of the decedent's death, within which settlement must be effected, in order to obviate interminable delay in disposing of the estate. In the consular officer's discretion, he may before releasing the estate, require the claimant to give bond in an amount fixed by the officer himself to run for such period of time as he may designate, in order to protect himself against other possible claims against the estate. If claim to the estate is still unproved at the expiration of the period set, or the claimant refuses to meet the conditions of any bond which the consular officer may require, the consular officer should dispose of the entire personal estate in the manner prescribed by § 72.46.

**§ 72.48 Consular action on unclaimed estates.**

If, after the expiration of one year from the date of the decedent's death, a legal representative has not appeared to claim the estate, the consular officer should dispose of the entire personal estate in the manner prescribed by § 72.46.

**§ 72.49 Disposition of estate upon departure of responsible officer.**

(a) *Responsibility vested in officer, not post.* For the purpose of the regulations in this part, the consular officer who actually takes possession and disposes of the personal estate of the deceased, i.e., the officer whose signature appears on the inventory of effects, is considered to be the responsible officer. Consequently, upon his departure from the post, either on transfer or extended leave, provision should be made for the disposition of any estate remaining unsettled at the time of his departure.

(b) *Procedure when estate held for less than one year.* When the personal estate is held less than one year, the personal effects in the departing officer's possession should be turned over to another officer at the post against a receipt therefor, in triplicate, identifying the property and cash on hand by reference to the inventory (§§ 72.35 and 72.36) and the trust fund records of the post.

(c) *Procedure when estate held for more than one year.* When the estate has been held for more than one year, the personal effects in the departing officer's possession should be forwarded to the Department for transmission to the General Accounting Office in the manner prescribed by § 72.46 and accounted for in accordance with § 72.50 unless circumstances as described in §§ 72.46 and 72.47 warrant continuing efforts to effect agreement between rival claimants, or to establish an unproved claim. If the estate is not forwarded to the Department, it should be turned over to another officer at the post in the same manner authorized by paragraph (b) of this section.

**§ 72.50 Final statement of account.**

The consular officer must account directly to the parties in interest and to the courts of law in estate matters. Consequently, he must keep an account

of receipts and expenditures for the personal estate of the deceased; i.e., debit all moneys and effects which actually come into his possession, and credit all payments made on account of the estate. At such time as the consular officer is ready to deliver the estate, he should prepare his final statement of account, entering thereon the balance delivered to the legal representative or person designated by him (with name and address stipulated) or the balance forwarded to the Department for transmission to the General Accounting Office.

**§ 72.51 Preparation and disposition of final statement of account.**

The final statement of account should be prepared in quadruplicate. All copies should be signed by the accountable officer and the consular impression seal impressed on each copy, and should be disposed of in the following manner:

- (a) The original should be sent to the legal representative with the final balance due the estate;
- (b) One copy retained in the office files; and
- (c) Two copies, under cover of a despatch, submitted to the Department (one copy for transmission to the General Accounting Office).

In all cases where the residue of the personal estate is to be transmitted to the General Accounting Office for safekeeping and disposition (see §§ 72.46 to 72.48), the original should be sent to the Department, together with the two copies normally submitted, accompanied by a despatch giving detailed information concerning the efforts made by the consular officer to deliver the personal effects to a legal representative or other authorized person. Any information concerning the last known address of the decedent in the United States should also be supplied.

**§ 72.52 Fee services.**

Fees are charged for overseeing the appraisal, sale and final disposition of the estate, disbursing funds, and for-

warding securities, etc., as provided in the Schedule of Fees, 22 CFR 22.1.

[63 FR 6480, Feb. 9, 1998]

**§ 72.53 No-fee services.**

Fees are not chargeable:

- (a) For taking possession of, making an inventory, placing the official seal on the estate (real or personal property), or for breaking or removing such seals (§§ 72.28–72.29);
- (b) On funds furnished by relatives or other interested persons to cover expenses incident to the death and disposition of the remains, or for the settlement of the estate (§ 72.39(b));
- (c) On securities and other instruments not negotiated (or not negotiable) by the consular officer (§ 72.28(g)), or on bank deposits;
- (d) For releasing on the spot against memorandum receipt and without occasion either for safekeeping on official accountability or for consular inventory and appraisal, to the legal representative or other authorized person in the country, of personal property taken into nominal possession for the explicit purposes of transfer of custody (§ 72.29(a)).

[22 FR 10841, Dec. 27, 1957, as amended at 63 FR 6480, Feb. 9, 1998]

**§ 72.54 Estates of Government personnel exempt from fee assessments.**

The personal estates of all officers and employees of the United States who die abroad while on official duty, including military and civilian personnel of the Department of Defense and United States Coast Guard (see §§ 72.23 and 72.24) are exempt from the assessment of any Foreign Service fees.

**§ 72.55 Estates of citizens dying on the high seas exempt from fee assessments.**

The personal estates of all United States citizens who have died on the high seas are exempt from the assessment of any Foreign Service fees (see § 72.25).